

specifying the period in which they must be corrected.

(b) Early Head Start or Head Start grantees which have received written notification of an area of noncompliance to be corrected must correct the area of noncompliance within the time period specified by the responsible HHS official. A grantee which is unable or unwilling to correct the specified areas of noncompliance within the prescribed time period will be judged to have a deficiency which must be corrected, either immediately or pursuant to a Quality Improvement Plan (see 45 CFR 1304.3(a)(6)(iii) and 45 CFR 1304.60).

PART 1305—ELIGIBILITY, RECRUITMENT, SELECTION, ENROLLMENT AND ATTENDANCE IN HEAD START

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§ 1305.1 Purpose and scope.

This part prescribes requirements for determining community needs and recruitment areas. It contains requirements and procedures for the eligibility determination, recruitment, selection, enrollment and attendance of children in Head Start programs and explains the policy concerning the charging of fees by Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304, as applicable.

[57 FR 46725, Oct. 9, 1992, as amended at 61 FR 57226, Nov. 5, 1996]

§ 1305.2 Definitions.

(a) *Children with disabilities* means children with mental retardation, hear-

ing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities who, by reason thereof need special education and related services. The term “children with disabilities” for children aged 3 to 5, inclusive, may, at a State’s discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

(b) *Enrollment* means the official acceptance of a family by a Head Start program and the completion of all procedures necessary for a child and family to begin receiving services.

(c) *Enrollment opportunities* mean vacancies that exist at the beginning of the enrollment year, or during the year because of children who leave the program, that must be filled for a program to achieve and maintain its funded enrollment.

(d) *Enrollment year* means the period of time, not to exceed twelve months, during which a Head Start program provides center or home-based services to a group of children and their families.

(e) *Family* means all persons living in the same household who are:

(1) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in the program, and (2) related to the parent(s) or guardian(s) by blood, marriage, or adoption.

(f) *Funded enrollment* means the number of children which the Head Start grantee is to serve, as indicated on the grant award.

(g) *Head Start eligible* means a child that meets the requirements for age and family income as established in this regulation or, if applicable, as established by grantees that meet the requirements of section 645(a)(2) of the Head Start Act. Up to ten percent of

the children enrolled may be from families that exceed the low-income guidelines. Indian Tribes meeting the conditions specified in 45 CFR 1305.4(b)(3) are excepted from this limitation.

(h) *Head Start program* means a Head Start grantee or its delegate agency(ies).

(i) *Income* means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, Social Security benefits, unemployment compensation, and public assistance benefits. Additional examples of gross cash income are listed in the definition of "income" which appears in U.S. Bureau of the Census, Current Population Reports, Series P-60-185.

(j) *Income guidelines* means the official poverty line specified in section 652 of the Head Start Act.

(k) *Indian Tribe* means any Tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(l) *Low-income family* means a family whose total annual income before taxes is equal to, or less than, the income guidelines. For the purpose of eligibility, a child from a family that is receiving public assistance or a child in foster care is eligible even if the family income exceeds the income guidelines.

(m) *Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.

(n) *Recruitment* means the systematic ways in which a Head Start program identifies families whose children are eligible for Head Start services, in-

forms them of the services available, and encourages them to apply for enrollment in the program.

(o) *Recruitment area* means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.

(p) *Responsible HHS official* means the official of the U.S. Department of Health and Human Services having authority to make Head Start grant awards, or his or her designee.

(q) *Selection* means the systematic process used to review all applications for Head Start services and to identify those children and families that are to be enrolled in the program.

(r) *Service area* means the geographic area identified in an approved grant application within which a grantee may provide Head Start services.

(s) *Vacancy* means an unfilled enrollment opportunity for a child and family in the Head Start program.

[57 FR 46725, Oct. 9, 1992, as amended at 58 FR 5518, Jan. 21, 1993; 63 FR 12657, Mar. 16, 1998]

§ 1305.3 Determining community strengths and needs.

(a) Each Early Head Start grantee and Head Start grantee must identify its proposed service area in its Head Start grant application and define it by county or sub-county area, such as a municipality, town or census tract or a federally-recognized Indian reservation. With regard to Indian Tribes, the service area may include areas designated as near-reservation by the Bureau of Indian Affairs (BIA) or, in the absence of such a designation, a Tribe may propose to define its service area to include nearby areas where Indian children and families native to the reservation reside, provided that the service area is approved by the Tribe's governing council. Where the service area of a Tribe includes a non-reservation area, and that area is also served by another Head Start grantee, the Tribe will be authorized to serve children from families native to the reservation residing in the non-reservation area as well as children from families residing on the reservation.

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(b) The grantee's service area must be approved, in writing, by the responsible HHS official in order to assure that the service area is of reasonable size and, except in situations where a near-reservation designation or other expanded service area has been approved for a Tribe, does not overlap with that of other Head Start grantees.

(c) Each Early Head Start and Head Start grantee must conduct a Community Assessment within its service area once every three years. The Community Assessment must include the collection and analysis of the following information about the grantee's Early Head Start or Head Start area:

(1) The demographic make-up of Head Start eligible children and families, including their estimated number, geographic location, and racial and ethnic composition;

(2) Other child development and child care programs that are serving Head Start eligible children, including publicly funded State and local preschool programs, and the approximate number of Head Start eligible children served by each;

(3) The estimated number of children with disabilities four years old or younger, including types of disabilities and relevant services and resources provided to these children by community agencies;

(4) Data regarding the education, health, nutrition and social service needs of Head Start eligible children and their families;

(5) The education, health, nutrition and social service needs of Head Start eligible children and their families as defined by families of Head Start eligible children and by institutions in the community that serve young children;

(6) Resources in the community that could be used to address the needs of Head Start eligible children and their families, including assessments of their availability and accessibility.

(d) The Early Head Start and Head Start grantee and delegate agency must use information from the Community Assessment to:

(1) Help determine the

grantee's philosophy, and its long-range and short-range program objectives;

(2) Determine the type of component services that are most needed and the program option or options that will be implemented;

(3) Determine the recruitment area that will be served by the grantee, if limitations in the amount of resources make it impossible to serve the entire service area.

(4) If there are delegate agencies, determine the recruitment area that will be served by the grantee and the recruitment area that will be served by each delegate agency.

(5) Determine appropriate locations for centers and the areas to be served by home-based programs; and

(6) Set criteria that define the types of children and families who will be given priority for recruitment and selection.

(e) In each of the two years following completion of the Community Assessment the grantee must conduct a review to determine whether there have been significant changes in the information described in paragraph (b) of this section. If so, the Community Assessment must be updated and the decisions described in paragraph (c) of this section must be reconsidered.

(f) The recruitment area must include the entire service area, unless the resources available to the Head Start grantee are inadequate to serve the entire service area.

(g) In determining the recruitment area when it does not include the entire service area, the grantee must:

(1) Select an area or areas that are among those having the greatest need for Early Head Start or Head Start services as determined by the Community Assessment; and

(2) Include as many Head Start eligible children as possible within the recruitment area, so that:

(i) The greatest number of Head Start eligible children can be recruited and have an opportunity to be considered for selection and enrollment in the Head Start program, and

(ii), the Head Start program can enroll the children and families with the greatest need for its services.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970-0124 for paragraphs (b) and (d).)

[57 FR 46725, Oct. 9, 1992, as amended at 61 FR 57226, Nov. 5, 1996; 63 FR 2314, Jan. 15, 1998; 63 FR 12657, Mar. 16, 1998]

§ 1305.4 Age of children and family income eligibility.

(a) To be eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located, except in cases where the Head Start program's approved grant provides specific authority to serve younger children. Examples of such exceptions are programs serving children of migrant families and Early Head Start programs.

(b)(1) At least 90 percent of the children who are enrolled in each Head Start program must be from low-income families.

(2) Except as provided in paragraph (b)(3) of this section, up to ten percent of the children who are enrolled may be children from families that exceed the low-income guidelines but who meet the criteria that the program has established for selecting such children and who would benefit from Head Start services.

(3) A Head Start program operated by an Indian Tribe may enroll more than ten percent of its children from families whose incomes exceed the low-income guidelines when the following conditions are met:

(i) All children from Indian and non-Indian families living on the reservation that meet the low-income guidelines who wish to be enrolled in Head Start are served by the program;

(ii) All children from income-eligible Indian families native to the reservation living in non-reservation areas, approved as part of the Tribe's service area, who wish to be enrolled in Head Start are served by the program. In those instances in which the non-reservation area is not served by another Head Start program, the Tribe must serve all of the income-eligible Indian

and non-Indian children whose families wish to enroll them in Head Start prior to serving over-income children.

(iii) The Tribe has the resources within its Head Start grant or from other non-Federal sources to enroll children from families whose incomes exceed the low-income guidelines without using additional funds from HHS intended to expand Head Start services; and

(iv) At least 51 percent of the children to be served by the program are from families that meet the income-eligibility guidelines.

(4) Programs which meet the conditions of paragraph (b)(3) of this section must annually set criteria that are approved by the Policy Council and the Tribal Council for selecting over-income children who would benefit from such a program.

(c) The family income must be verified by the Head Start program before determining that a child is eligible to participate in the program.

(d) Verification must include examination of any of the following: Individual Income Tax Form 1040, W-2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status as recipients of public assistance.

(e) A signed statement by an employee of the Head Start program, identifying which of these documents was examined and stating that the child is eligible to participate in the program, must be maintained to indicate that income verification has been made.

[57 FR 46725, Oct. 9, 1992, as amended at 63 FR 12658, Mar. 16, 1998]

§ 1305.5 Recruitment of children.

(a) In order to reach those most in need of Head Start services, each Head Start grantee and delegate agency must develop and implement a recruitment process that is designed to actively inform all families with Head Start eligible children within the recruitment area of the availability of services and encourage them to apply for admission to the program. This process may include canvassing the local community, use of news releases

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and advertising, and use of family referrals and referrals from other public and private agencies.

(b) During the recruitment process that occurs prior to the beginning of the enrollment year, a Head Start program must solicit applications from as many Head Start eligible families within the recruitment area as possible. If necessary, the program must assist families in filling out the application form in order to assure that all information needed for selection is completed.

(c) Each program, except migrant programs, must obtain a number of applications during the recruitment process that occurs prior to the beginning of the enrollment year that is greater than the enrollment opportunities that are anticipated to be available over the course of the next enrollment year in order to select those with the greatest need for Head Start services.

§ 1305.6 Selection process.

(a) Each Head Start program must have a formal process for establishing selection criteria and for selecting children and families that considers all eligible applicants for Head Start services. The selection criteria must be based on those contained in paragraphs (b) and (c) of this section.

(b) In selecting the children and families to be served, the Head Start program must consider the income of eligible families, the age of the child, the availability of kindergarten or first grade to the child, and the extent to which a child or family meets the criteria that each program is required to establish in §1305.3(c)(6). Migrant programs must also give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period.

(c) At least 10 percent of the total number of enrollment opportunities in each grantee and each delegate agency during an enrollment year must be made available to children with disabilities who meet the definition for children with disabilities in §1305.2(a). An exception to this requirement will be granted only if the responsible HHS official determines, based on such supporting evidence he or she may require,

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that the grantee made a reasonable effort to comply with this requirement but was unable to do so because there was an insufficient number of children with disabilities in the recruitment area who wished to attend the program and for whom the program was an appropriate placement based on their Individual Education Plans (IEP) or Individualized Family Service Plans (IFSP), with services provided directly by Head Start or Early Head Start in conjunction with other providers.

(d) Each Head Start program must develop at the beginning of each enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria to assure that eligible children enter the program as vacancies occur.

[57 FR 46725, Oct. 9, 1992, as amended at 63 FR 12658, Mar. 16, 1998]

§ 1305.7 Enrollment and re-enrollment.

(a) Each child enrolled in a Head Start program, except those enrolled in a migrant program, must be allowed to remain in Head Start until kindergarten or first grade is available for the child in the child's community, except that the Head Start program may choose not to enroll a child when there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

(b) A Head Start grantee must maintain its funded enrollment level. When a program determines that a vacancy exists, no more than 30 calendar days may elapse before the vacancy is filled. A program may elect not to fill a vacancy when 60 calendar days or less remain in the program's enrollment year.

(c) If a child has been found income eligible and is participating in a Head Start program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year. Children who are enrolled in a program receiving funds under the authority of section 645A of the Head Start Act (programs for families with infants and toddlers, or Early Head Start) remain income eligible while they are participating in the program. When a child moves from a program serving infants and toddlers to a

Head Start program serving children age three and older, the family income must be reverified. If one agency operates both an Early Head Start and a Head Start program, and the parents wish to enroll their child who has been enrolled in the agency's Early Head Start program, the agency must ensure, whenever possible, that the child receives Head Start services until enrolled in school.

[57 FR 46725, Oct. 9, 1992, as amended at 63 FR 12658, Mar. 16, 1998]

§ 1305.8 Attendance.

(a) When the monthly average daily attendance rate in a center-based program falls below 85 percent, a Head Start program must analyze the causes of absenteeism. The analysis must include a study of the pattern of absences for each child, including the reasons for absences as well as the number of absences that occur on consecutive days.

(b) If the absences are a result of illness or if they are well documented absences for other reasons, no special action is required. If, however, the absences result from other factors, including temporary family problems that affect a child's regular attendance, the program must initiate appropriate family support procedures for all children with four or more consecutive unexcused absences. These procedures must include home visits or other direct contact with the child's parents. Contacts with the family must emphasize the benefits of regular attendance, while at the same time remaining sensitive to any special family circumstances influencing attendance patterns. All contacts with the child's family as well as special family support service activities provided by program staff must be documented.

(c) In circumstances where chronic absenteeism persists and it does not seem feasible to include the child in either the same or a different program option, the child's slot must be considered an enrollment vacancy.

§ 1305.9 Policy on fees.

A Head Start program must not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in the program. If the

family of a child determined to be eligible for participation by a Head Start program volunteers to pay part or all of the costs of the child's participation, the Head Start program may accept the voluntary payments and record the payments as program income.

Under no circumstances shall a Head Start program solicit, encourage, or in any other way condition a child's enrollment or participation in the program upon the payment of a fee.

§ 1305.10 Compliance.

A grantee's failure to comply with the requirements of this Part may result in a denial of refunding or termination in accordance with 45 CFR part 1303.

PART 1306—HEAD START STAFFING REQUIREMENTS AND PROGRAM OPTIONS

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